

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 09/856,969 Confirmation No.: 5142  
Applicant(s): Cayuela et al.  
Filed: August 1, 2001  
Art Unit: 1645  
Examiner: Jana A. Hines  
Title: SELECTION AND USES OF LACTIC ACID BACTERIA STRAINS  
MODULATING NON-SPECIFIC IMMUNITY

Docket No.: 033339/234602  
Customer No.: 00826

Mail Stop  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

## RESPONSE

Sir:

In response to the Office Action dated August 26, 2003, Applicants request reconsideration by the Examiner in light of the following comments.

In the August 26, 2003 Official Action, the Examiner has taken the position that Applicants' amendment dated May 20, 2003 is not fully responsive to the previous Official Action. For the reasons set forth below, Applicants' prior response was indeed fully responsive to the Official Action. The claims as amended are directed to the same invention as the previously elected claims of Group I.

Claims 1-6 and 10-12 as now presented are directed to a method for regulating the inflammatory response of enterocytes. Thus, these claims are directed to a use of the composition which was the subject matter of Claims 1-6 and 10-12 as presented in the Preliminary Amendment submitted at the time of filing.

According to PCT Rule 13 and 37 C.F.R. 1.475(b)(2), the following combination of categories of claims will be considered to have unity of invention: "A product and a process of use of said product". Therefore, according to these standards, there is unity of invention between the elected claims of group I (i.e. earlier-presented Claims 1-6 and 10-20) which are directed to a

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product in the nature of a composition and Claims 1-6 and 10-12 as now presented, which are directed to a use of said composition. The claims as now presented are fully consistent with the elected invention of Group I.

Further, the regulatory effect of the composition on the inflammatory response of enterocytes results from the ability of the lactic acid bacteria of this composition to decrease the production of NO by cultures of enterocytes preactivated with pro-inflammatory cytokines and bacterial LPS, which was the essential technical feature of the composition of previous Claims 1-6.

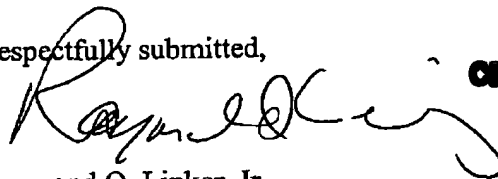
The pending method claims correspond to the original Claims 1-6 of PCT 00/28943, which were "second therapeutic use" claims (the European equivalent of United States "method of treatment" claims). Thus, the pending method claims are actually directed to an originally-claimed invention, and the PCT search, as well as the International Preliminary Examination were performed on the basis of this invention.

For the reasons noted, it should be evident that the claims as now presented are closely related to the previous claims and are indeed directed to the previously elected invention.

Therefore, Applicants respectfully request the Examiner to proceed with an examination on the merits of the elected claims as now presented.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Raymond O. Linker, Jr.  
Registration No. 26,419

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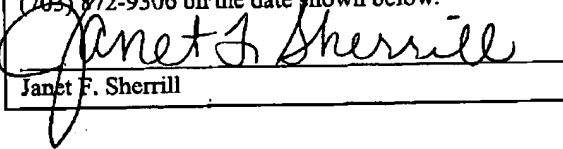
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**OFFICIAL NON-FINAL RESPONSE**

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